

PANORAMIC

ENFORCEMENT OF FOREIGN JUDGMENTS

Türkiye

 LEXOLOGY

Enforcement of Foreign Judgments

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LEGISLATION

Treaties

Is your country party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments? What is the country's approach to entering into these treaties, and what, if any, amendments or reservations has your country made to such treaties?

Except for multilateral treaties on family law, Türkiye is not a signatory to multilateral treaties for the reciprocal recognition and enforcement of foreign judgments. However, Türkiye is a party to conventions such as the Convention on the Contract for the International Carriage of Goods by Road 1956 and the Convention concerning International Carriage by Rail 1985, which contain provisions for the recognition and enforcement of foreign judgments, but only for disputes concerning the application of the aforementioned conventions.

Türkiye has also entered into bilateral treaties with Albania, Algeria, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, China, Croatia, Georgia, Iran, Iraq, Italy, Kazakhstan, Kyrgyzstan, Lithuania, Macedonia, Moldova, Mongolia, Oman, Poland, Northern Cyprus, Romania, Slovakia, Syria, Tajikistan, Tunisia, Turkmenistan, Ukraine and Uzbekistan for the reciprocal recognition and enforcement of foreign judgments and judicial assistance in respect of commercial and civil matters.

In addition, Turkish courts recognise and enforce the judgments of many countries, such as Germany, the United Kingdom and the United States, based on de facto reciprocity between these countries and Türkiye. The evaluation of de facto reciprocity is conducted on a state-by-state basis for the United States.

Law stated - 11 September 2024

Intra-state variations

Is there uniformity in the law on the enforcement of foreign judgments among different jurisdictions within the country?

There is uniformity in the law on the enforcement of foreign judgments within Türkiye.

Law stated - 11 September 2024

Sources of law

What are the sources of law regarding the enforcement of foreign judgments?

The [Act on Private International Law and International Procedural Law No. 5718](#), dated 27 November 2007, is the main legislation that regulates the recognition and enforcement of foreign judgments.

Under article 90 of the [Turkish Constitution](#), international agreements duly put into effect bear the force of law. Therefore, relevant international agreements also constitute a source of law regarding the enforcement of foreign judgments.

Precedents of the Supreme Court are also important. However, in principle, the precedents of the Supreme Court are not binding in Turkish law apart from decisions on the unification of conflicting judgments.

Law stated - 11 September 2024

Hague Convention requirements

To the extent the enforcing country is a signatory of the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, will the court require strict compliance with its provisions before recognising a foreign judgment?

Türkiye is not a signatory to the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters 1971.

Law stated - 11 September 2024

BRINGING A CLAIM FOR ENFORCEMENT

Limitation periods

What is the limitation period for enforcement of a foreign judgment? When does it commence to run? In what circumstances would the enforcing court consider the statute of limitations of the foreign jurisdiction?

Under Turkish law, there is no specific limitation period for the enforcement of a foreign judgment. However, article 8 of the Act on Private International Law and International Procedural Law (PIL) regulates the statute of limitations for legal transactions and relationships that carry foreign elements. According to this article, the statute of limitations is subject to the law applicable to the legal transaction or relationship. The Supreme Court, in its various decisions, has stated that limitation periods are not related to public policy and provisions of foreign law should apply to this issue (Fourth Chamber of the Supreme Court (Merit No. 2003/10163, Decision No. 2004/1408) and 11th Chamber of the Supreme Court (Merit No. 1998/383, Decision No. 1998/3945)). Also, as to the precedents of the Supreme Court, if a foreign judgment is recognised but not yet enforced, the statute of limitations specific to the merits (subject matter) of that judgment regulated by related Turkish provisions will be applied to that judgment as if it were a judgment rendered by a domestic court.

Law stated - 11 September 2024

Types of enforceable order

Which remedies ordered by a foreign court are enforceable in your jurisdiction?

Under article 50 of PIL, foreign judgments regarding civil law matters are enforceable as long as they are final under the laws of the foreign country.

In addition to the matters determined in article 50 of PIL, it has been opined that not only judgments rendered by civil courts but also decisions rendered by administrative courts are enforceable, provided that they concern civil law matters.

The enforcement of interim injunctions is not regulated under PIL. Concerning article 50 of PIL, there is a view in Türkiye that interim decisions will only be enforceable if the dispute has been finally resolved by the foreign court that issued these interim decisions. However, there is also the opinion that, in practice, interim injunctions are not enforceable under Turkish law since they are not final decisions.

Article 50 of PIL further sets forth that foreign judgments that are rendered by criminal courts regarding personal rights or monetary compensation are also enforceable.

Law stated - 11 September 2024

Competent courts

Must cases seeking enforcement of foreign judgments be brought in a particular court?

Cases seeking enforcement of foreign judgments must be brought in a particular court. Article 51 of PIL regulates the competent courts for enforcement of foreign judgments. According to this article, the civil courts of first instance are competent for the enforcement of foreign judgments. Nevertheless, there is no unity in practice, because some civil courts of first instance reject the applications owing to lack of jurisdiction and send the file to the relevant commercial, intellectual property or labour courts.

Paragraph 2, article 51 of PIL also regulates the jurisdiction of the courts. Under this provision, a case regarding enforcement of a foreign judgment must be filed before the court where the party against which the enforcement is sought, is domiciled. If there is no domicile address for this party, then the case can be filed before the court at this party's place of residence. If neither of these exists, the case can be filed before one of the courts in Ankara, Istanbul or İzmir.

Law stated - 11 September 2024

Separation of recognition and enforcement

To what extent is the process for obtaining judicial recognition of a foreign judgment separate from the process for enforcement?

The process for obtaining judicial recognition for a foreign judgment is almost the same as the process for enforcement. However, contractual or de facto reciprocity is not required for the recognition of a foreign judgment.

Law stated - 11 September 2024

OPPOSITION

Defences

Can a defendant raise merits-based defences to liability or to the scope of the award entered in the foreign jurisdiction, or is the defendant limited to more narrow grounds for challenging a foreign judgment?

Under Turkish law, defendants cannot raise merits-based defences. Under article 55 of the Act on Private International Law and International Procedural Law (PIL), the defendant is limited to narrow grounds for challenging a foreign judgment.

Under articles 54 and 55 of PIL, the defendant may challenge the foreign judgment by alleging that:

- there is no contractual or de facto reciprocity;
- the judgment is on an issue subject to the exclusive jurisdiction of Turkish courts;
- the judgment was rendered by a court unrelated to the matter in dispute and the parties;
- the judgment explicitly violates Turkish public policy;
- the foreign court did not respect the right of defence of the party against which enforcement is sought, in Türkiye;
- the judgment is not final under the laws of the foreign country;
- a ground exists that would prevent enforcement of the judgment (eg, a reason for restitution of the judgment); or
- the judgment has already been wholly or partially executed.

Law stated - 11 September 2024

Injunctive relief

May a party obtain injunctive relief to prevent foreign judgment enforcement proceedings in your jurisdiction?

No. A party cannot obtain injunctive relief to prevent foreign judgment enforcement proceedings. The decisions that can be given by the enforcing court are regulated under article 56 of PIL, according to which the court can either accept or dismiss the enforcement of the foreign judgment. In this regard, the court cannot grant injunctive relief to prevent foreign judgment enforcement proceedings.

Law stated - 11 September 2024

REQUIREMENTS FOR RECOGNITION

Basic requirements for recognition

What are the basic mandatory requirements for recognition of a foreign judgment?

The requirements for recognition of a foreign judgment are regulated under articles 54 to 58 of the Act on Private International Law and International Procedural Law (PIL) and can be summarised as follows:

- the foreign court must have respected the right of defence of the party against which enforcement is sought in Türkiye;
- the foreign judgment must be final under the laws of the foreign country;
- the foreign judgment should not be on an issue subject to the exclusive jurisdiction of the Turkish courts; and
- the foreign judgment must comply with Turkish public policy.

If these conditions are met, the court will decide for the recognition of a foreign judgment.

Law stated - 11 September 2024

Other factors

May other non-mandatory factors for recognition of a foreign judgment be considered and, if so, what factors?

There are no non-mandatory factors. The factors for recognition of a foreign judgment are explicitly regulated in articles 54 to 58 of PIL.

Law stated - 11 September 2024

Procedural equivalence

Is there a requirement that the judicial proceedings where the judgment was entered correspond to due process in your jurisdiction and, if so, how is that requirement evaluated?

There is no explicit regulation, as the judicial proceedings where the judgment was entered shall correspond to due process in Turkish jurisdiction. However, foreign judgments that violate Turkish public policy cannot be recognised or enforced. Since provisions similar to the due process of law are explicitly stated by the Turkish Constitution – that each person is equal before the law and shall be judged by impartial and independent courts – judgments that do not comply with these provisions may not be recognised owing to their explicit violation of public policy.

Law stated - 11 September 2024

JURISDICTION OF THE FOREIGN COURT

Personal jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had personal jurisdiction over the defendant and, if so, how is that requirement met?

Turkish law does not recognise the concept of personal jurisdiction, and therefore the enforcing court will not conduct such an examination.

Law stated - 11 September 2024

Subject-matter jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had subject-matter jurisdiction over the controversy and, if so, how is that requirement met?

According to article 54 of the Act on Private International Law and International Procedural Law (PIL), upon the objection of the defendant, the Turkish court will examine the jurisdiction of the foreign court over the controversy. The court, upon the objection of the defendant, will examine whether the judgment was granted by the court of a country that considered itself competent although it had no actual relation with either the matter in dispute or the parties. Therefore, the Turkish court shall not ex officio examine the subject-matter jurisdiction of the foreign court, except upon the objection of the defendant. If the foreign court has no actual relation with either the matter in dispute or the parties, the foreign judgment cannot be enforced.

According to the same article, the court will ex officio examine whether the judgment was rendered on an issue that falls under the exclusive jurisdiction of Turkish courts.

Law stated - 11 September 2024

Service

Must the defendant have been technically or formally served with notice of the original action in the foreign jurisdiction, or is actual notice sufficient? How much notice is usually considered sufficient?

Under article 54 of PIL, the defendant must be properly served with the original action in the foreign jurisdiction. Also, there is an opinion that all procedures made during the action should be duly served since this is part of a fair trial. Therefore, the notice of the original action should also be formally served.

Law stated - 11 September 2024

Fairness of foreign jurisdiction

Will the court consider the relative inconvenience of the foreign jurisdiction to the defendant as a basis for declining to enforce a foreign judgment?

The court will not conduct a fairness examination of the foreign judgment. The court's examination will be limited to the enforcement requirements determined in articles 54 and 55 of PIL (prohibition of *révision au fond*). However, the intervention of the court will come

into question if the judgment explicitly violates Turkish public policy. The foreign judgment must comply with Turkish public policy.

Law stated - 11 September 2024

EXAMINATION OF THE FOREIGN JUDGMENT

Vitiating by fraud

Will the court examine the foreign judgment for allegations of fraud upon the defendant or the court?

The vitiating of a foreign judgment by fraud is not regulated under the Act on Private International Law and International Procedural Law (PIL).

However, under the judgment of the Second Chamber of the Supreme Court dated 15 November 1984 (Merit No. 1984/9293 and Decision No. 1984/9484), the reasons for 'restitution of the judgment' constitute a breach of public policy.

The reasons for the 'restitution of the judgment' are regulated under the Turkish Procedural Code. Accordingly, if the judgment is affected by the fraudulent acts of the winning party, this constitutes a reason for restitution of judgment. In this regard, it can be concluded that the court will ex officio examine the foreign judgment in terms of fraud.

Law stated - 11 September 2024

Public policy

Will the court examine the foreign judgment for consistency with the enforcing jurisdiction's public policy and substantive laws?

In principle, the court will not examine the foreign judgment for consistency with substantive laws. However, the foreign judgment rendered should not be on an issue that is subject to the exclusive jurisdiction of the Turkish courts, such as cases arising from rights in rem in immovable property and cases arising from consumer or insurance agreements.

Concerning public policy, Turkish courts will ex officio examine whether enforcement of foreign judgment explicitly violates Turkish public policy. The foreign judgment cannot be enforced if it explicitly violates Turkish public policy.

The Supreme Court's decision on the unification of conflicting judgments, dated 10 February 2012 and numbered 2010/1 E, 2012/1 K, asserts that the lack of reasoning of the foreign judgment does not constitute a breach of Turkish public policy per se, and therefore would not preclude the enforcement of the foreign judgment.

Law stated - 11 September 2024

Conflicting decisions

What will the court do if the foreign judgment sought to be enforced is in conflict with another final and conclusive judgment involving the same parties or parties in privity?

Enforcement of conflicting decisions is not regulated under PIL. However, there is a scholarly opinion that if the foreign judgment conflicts with another final and conclusive judgment, the foreign judgment cannot be enforced by the Turkish court. Concerning conflicting decisions, the parties and the subject matter of the foreign judgment must be the same as those in the final and conclusive judgment. The final and conclusive judgment can be either the Turkish court's judgment or another foreign judgment that has already been recognised or enforced by the Turkish court.

Law stated - 11 September 2024

Enforcement against third parties

Will a court apply the principles of agency or alter ego to enforce a judgment against a party other than the named judgment debtor?

No. The Turkish court cannot enforce a judgment against a party other than the named judgment debtor. As a general principle, the judgments are binding only on the parties to the dispute.

Law stated - 11 September 2024

Alternative dispute resolution

What will the court do if the parties had an enforceable agreement to use alternative dispute resolution, and the defendant argues that this requirement was not followed by the party seeking to enforce?

There is no explicit provision in PIL on this issue. In the decision of the Kadikoy Fourth Commercial Court dated 17 June 2008 (Merit No. 2007/1020 and Decision No. 2008/386), the court rejected the defendant's objections regarding alternative dispute resolution based on the following grounds:

There is no dispute that the Uzbekistan judgment becomes final and conclusive after the appeal process in Uzbekistan where the defendant submitted his arbitration objection. Thus, the final and conclusive judgment containing no provisions which may violate Turkish public policy should be enforced since all requirements stated in article 54 of PIL were met.

Although the Supreme Court has not discussed this issue until now, provided that the numerous *clausus* conditions of the enforcement have been met, the courts will likely accept the enforcement of judgment case disregarding the parties' objections as to an agreement on alternative dispute resolution, probably on the basis that an objection regarding the existence of alternative dispute resolution clauses between the parties is something that should have been evaluated by the court that rendered the actual decision on the merits of the dispute.

Law stated - 11 September 2024

Favourably treated jurisdictions

Are judgments from some foreign jurisdictions given greater deference than judgments from others? If so, why?

Türkiye does not give greater deference to judgments from some foreign jurisdictions. However, the determination of de facto reciprocity may take longer for certain foreign jurisdictions since the courts sometimes prefer to confirm the reciprocity with the Turkish Ministry of Justice.

Law stated - 11 September 2024

Alteration of awards

Will a court ever recognise only part of a judgment, or alter or limit the damage award?

The Turkish court will examine a foreign judgment to determine whether the requirements for enforcement are met. The court may decide to enforce the foreign judgment as a whole or in part as per article 56 of PIL.

However, the court may not alter or limit the damage award as long as the award does not violate Turkish public policy. There is an opinion that, since punitive damages are considered incompatible with the principles of Turkish liability law, they are considered, because of their nature, incompatible with Turkish public policy. In other words, material damages exceeding actual loss are considered incompatible with Turkish public policy.

According to the general principle of 'civil courts' commitment to the request of the plaintiff, in Turkish law, if the claimant requests only a part of the judgment to be enforced, the said part will be enforced by the court.

Law stated - 11 September 2024

Effect of sanctions

What effect do foreign or domestic sanctions have on the enforcement of foreign judgments in your jurisdiction? Will a court refuse enforcement of a judgment against or in favour of a sanctioned entity or individual? If so, which sanctions regimes do the courts of your jurisdiction recognise?

There is no specific rule regulating the impact of foreign or domestic sanctions on the enforcement of foreign judgments in Türkiye. In this regard, a foreign or domestic sanction would not qualify as an obstacle before the enforcement of a foreign judgment per se. That being the case, as mentioned earlier, one of the issues examined by Turkish Courts in enforcement actions is the explicit violation of Turkish public policy. In the event that Turkish courts deem enforcement of a foreign judgment in breach of public policy due to

the existence of a foreign or domestic sanction, the enforcement request may be rejected, depending on the specifics of the case.

Law stated - 11 September 2024

AWARDS AND SECURITY FOR APPEALS

Currency, interest, costs

In recognising a foreign judgment, does the court convert the damage award to local currency and take into account such factors as interest and court costs and exchange controls? If interest claims are allowed, which law governs the rate of interest?

Turkish courts do not convert the damage award into local currency. However, during the collection process, the debtor may prefer to make the payment in Turkish liras. The court costs and the official attorneys' fees, which will be determined in favour of the successful party according to the annual tariff of the Turkish Bar Association, will be in the local currency.

Concerning interest, the interest rate determined in the foreign judgment shall be applied until the collection procedure in Türkiye.

Law stated - 11 September 2024

Security

Is there a right to appeal from a judgment recognising or enforcing a foreign judgment? If so, what procedures, if any, are available to ensure the judgment will be enforceable against the defendant if and when it is affirmed?

Under article 57 of the Act on Private International Law and International Procedural Law, court decisions regarding the recognition and enforcement of a foreign judgment can be appealed as per the general provisions of the Turkish Procedural Code.

Under Turkish law, the courts first render their short decisions. After around one month, reasoned decisions are issued. The decision of the civil court of first instance can be appealed within two weeks of notification of the reasoned decision before the regional appellate court. The parties are also entitled to appeal the decision rendered by the regional appellate court before the Supreme Court within two weeks of notification of the regional appellate court's decision.

The appeal process prevents the execution of the Turkish court's decision regarding enforcement of the foreign judgment. In other words, the foreign judgment cannot be executed until the Turkish court's decision regarding enforcement of a foreign judgment becomes final and cannot be appealed.

If the debtor does not comply with the Turkish court's decision regarding enforcement of the foreign judgment, the claimant can have the decision executed by application to the bailiff's office. The debtor must comply with the executive order within seven days of the notification. Otherwise, the claimant can apply for the attachment of assets that the debtor may have.

ENFORCEMENT AND PITFALLS

Enforcement process

Once a foreign judgment is recognised, what is the process for enforcing it in your jurisdiction?

Under Turkish law, recognition and enforcement of a foreign judgment are regulated separately. In principle, enforceable judgments can be enforced, whereas declaratory judgments can be recognised. The party can request an enforceable judgment to be recognised as well. However, in such a case the party cannot enforce this judgment. The recognised judgment can be used as conclusive evidence and decision.

The process of enforcement of a foreign judgment is regulated under articles 50 to 57 of the Act on Private International Law and International Procedural Law.

The claimant must file a case for enforcement of a foreign judgment before the civil court of first instance that has jurisdiction.

The petition must include:

- the names and addresses of the parties and their attorneys, if any;
- the country, court, date, number and summary of the judgment; and
- the claimant's request of the said part if only a part of the judgment is to be enforced.

The original or an approved copy of the judgment, the approved letter, and translations showing that the judgment is final must be attached to the plaintiff's petition.

The requirements for enforcement of a foreign judgment are as follows:

- there must be contractual or de facto reciprocity;
- the foreign court must have respected the right of defence of the party against which enforcement is sought in Türkiye;
- the foreign judgment that is subject must be final under the laws of the foreign country;
- the foreign judgment should not be on an issue subject to the exclusive jurisdiction of the Turkish courts; and
- the foreign judgment should not violate Turkish public policy.

If these conditions are met, the court will grant enforcement of the foreign judgment.

Once the enforcement decision granted by the court becomes final and binding, the plaintiff can make an application to the bailiff's office and request the office to send an execution order to the defendant. The defendant must comply with the execution order within seven days. If the defendant fails to comply with the execution order, the claimant can apply for the attachment of assets that the debtor may have.

Pitfalls

What are the most common pitfalls in seeking recognition or enforcement of a foreign judgment in your jurisdiction?

One of the most common pitfalls is the duration of the proceedings. In practice, recognition and enforcement of a foreign judgment takes about six to 18 months. If the decision is appealed before a regional appellate court and finally before the Supreme Court, the process will take longer.

Public policy is another common pitfall since the laws do not regulate the definition of public policy. In principle, Turkish public policy is interpreted narrowly by the courts and in this respect, only judgments that contradict indispensable and essential Turkish legal principles are considered to be violating Turkish public policy.

There have been Supreme Court precedents stating that judgments, where there is no discussion of reasoning, cannot be enforced, since they do not enable the courts to assess the requirements for enforcement and therefore breach Turkish public policy. For example, summary judgments under common law have been problematic concerning recognition and enforcement. Nevertheless, the decision of the Joint Chambers of the Court of Cassation, dated 10 February 2012, Merit No. 2010/1, Decision No. 2012/1, stated that the mere fact that a foreign decision lacks reasoning does not prevent that decision from being enforced. Decisions rendered by the Joint Chambers of the Supreme Court are binding on other chambers of the appeal court as well as the local (ie, first-instance) courts. Therefore, the recognition and enforcement of a foreign judgment can no longer be denied owing to the violation of Turkish public policy merely because the judgment does not include a discussion of reasoning.

Contractual or de facto reciprocity can be another pitfall for the enforcement of a foreign judgment. Although Türkiye has signed bilateral treaties with 29 countries, there are still many countries whose decisions cannot be enforced in Türkiye owing to the principle of reciprocity.

The jurisdiction of the court to hear the enforcement application is also a pitfall. Although civil courts of first instance are the courts having jurisdiction, there is no unity in practice because some civil courts of first instance reject applications on the grounds of lack of jurisdiction, instead sending the file to the relevant specialised court, such as a commercial, intellectual property or labour court. The recent Supreme Court precedents point towards specialised courts. Confusion may still arise between specialised courts owing to complex and multi-faceted subject matter. For instance, for disputes relating to intellectual property, some Supreme Court precedents rule for the jurisdiction of the intellectual property courts, while others indicate the commercial courts. In those cases, there is a risk that the court may reject the case due to non-jurisdiction and the counterparty may appeal this decision to prolong the proceedings.

Finally, the issue of court fees is another important pitfall. According to the Turkish Act on Fees, if the subject matter of the judgment seeking to be enforced is monetary, a proportional fee (6.831 per cent of the total amount in dispute) shall apply to enforcement applications, and one-quarter of this amount is payable on filing the application. If the judgment's subject matter is not monetary, a fixed court fee, depending on the subject matter, will be applied. However, although the general approach regarding court fees has been explained, there is

no firmly settled practice in this regard in Türkiye, and some courts apply fixed fees for enforcement applications, whereas some chambers of the Supreme Court seldom apply proportionate court fees.

Law stated - 11 September 2024

UPDATE AND TRENDS

Hot topics

Are there any emerging trends or hot topics in foreign judgment enforcement in your jurisdiction?

The applicable type of fee in actions for enforcement of foreign judgments has been a debatable issue under Turkish law. Some argue that the Law of Fees No. 492 (Law No. 492) requires the application fee be proportionate – which is 6.831 per cent of the total amount in dispute, and an adverse practice cannot be allowed unless the said provision is amended. On the other hand, others defend that actions for enforcement of foreign judgments are declaratory actions with no judgment on the merits and should be subject to the fixed application fee, which is an inconsiderable amount compared to the proportionate fee. There was not a unified court practice either regarding the applicable type of judgment fee in actions for enforcement of foreign judgments until a decision of the General Assembly of Civil Chambers of the Court of Cassation in 2019, ruling in favour of the fixed application fee. Although there are still courts ruling for proportionate fees, the majority of the precedents given in 2023 favour a fixed fee. This debate closely concerns the official attorney fees to be ruled in favour of the winning party as well because whether it will be a fixed or proportionate one depends on the solution of the very same controversy.

Law stated - 11 September 2024